

PT 98-12

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

FAMILY MATTERS, INC.)		
Applicant)		
)	Docket #	95-16-342
v.)		
)	Parcel Index #	11-30-217-004
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kevin J. Todd appeared on behalf of Family Matters, Inc.

Synopsis:

The hearing in this matter was held on December 10, 1997, at the James R. Thompson Center, 100 West Randolph Street, Chicago, Illinois to determine whether or not Cook County Parcel Index No. 11-30-217-004 qualified for exemption from real estate taxation for the 1995 assessment year.

Ms. Betty C. Jacobs, co-president of the Board of Directors of Family Matters, Inc. (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues presented in this matter include, first, whether the applicant owned the parcel here in issue and the buildings thereon during all or part of the 1995 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether the applicant used all or part of this parcel and the buildings thereon for primarily charitable purposes during the 1995

assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned and was in possession of this parcel and the buildings thereon during the period August 23, 1995, through December 31, 1995. It is further determined that the applicant is a charitable organization. It is also determined that the basement, first, and third floors of the building on this parcel, as well as 2/3rds of the garage, were used for primarily charitable purposes during the period August 23, 1995, through December 31, 1995. In addition, it is determined that the applicant leased the second floor and one space in the garage for profit during the period August 23, 1995, through September 30, 1995. Finally, it is determined that the applicant used the second floor of the building on this parcel, as well as 1/3rd of the garage, for primarily charitable purposes during the period October 1, 1995, through December 31, 1995. It is therefore concluded that this parcel, 3/4ths of the building thereon, and 3/4ths of the land on which the building is located, as well as 2/3rds of the garage, and 2/3rds of the land on which the garage is located, qualified for exemption for 36% of the 1995 assessment year. It is also concluded that the remaining 1/4th of the building, 1/4th of the land on which the building is located, as well as 1/3rd of the garage, and 1/3rd of the land on which the garage is located, qualified for exemption for 25% of the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel and the buildings thereon did not qualify for exemption for the 1995 assessment year was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On February 14, 1996, the Cook County Board of Appeals transmitted to the Department an Application for Property Tax Exemption To Board of Appeals, which had been filed by this applicant with the board on December 14, 1995. This application concerned this parcel for the 1995 assessment year. (Dept. Ex. No. 2)

3. On September 19, 1996, the Department notified the applicant that it was denying the exemption of this parcel for the 1995 assessment year. (Dept. Ex. No. 3)

4. By a letter dated October 8, 1996, Ms. Betty C. Jacobs, co-president of applicant, requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter which took place on December 10, 1997, was held pursuant to that request.

6. The closing on the purchase of this parcel was held on August 23, 1995. (Tr. p. 26)

7. The applicant was incorporated on May 4, 1987 under the name of Baptist Partners in Ministry, pursuant to the General Not For Profit Corporation Act of Illinois. The purposes of the applicant include the following:

The Corporation is formed for the purpose of engaging members of the Chicago Baptist Association Churches in significant urban ministry designed to strengthen traditional and emerging alternative families in the North of Howard Neighborhood through ministry to the whole person. . . . (Dept. Ex. No. 2I)

8. Articles of Amendment To the Articles of Incorporation of Baptist Partners in Ministry were filed on January 29, 1990, changing the name of the corporation to Family Matters, Inc. (Dept. Ex. No. 2J)

9. The parcel here in issue is improved with a 3 story building with a basement, which is commonly known as 7731 North Marshfield, Chicago, Illinois. This parcel is the only real estate which is owned by the applicant. (Dept. Ex. No. 2, Tr. p. 15)

10. There also is a three car garage on this parcel. (Tr. p. 32)

11. The primary area served by the applicant is the North of Howard Street area. About one half of the population of this area are Hispanic and the other one half are Black. (Tr. p. 14)

12. At the building on this parcel, the applicant operates an after-school program until 6:00 P.M. for 25 children. The applicant, in addition, provides tutoring for children in the evenings and on Saturdays. The applicant also operates teen programs which attempt to develop wise decision making and entrepreneurial skills for both boys and girls. (Tr. pp. 14 & 15)

13. The only program of the applicant for which a fee is charged is the after-school program. The fee for the after-school program is \$50.00 per month. (Tr. p. 16)

14. One of the basic tenets of the applicant's program is to get the parents of the children involved. The \$50.00 per month fee for the after-school program is a way to get the parents invested in the applicant's programs. (Tr. p. 18)

15. The applicant has an orientation meeting with the new parents either before or shortly after a child is enrolled in the after-school program. The orientation meeting is held either with the executive director of the applicant or the director of the program. At this meeting the parents are told that their child will never be turned away because of an inability to pay the fee. The parents are requested at this meeting to talk to the program director or the executive director of the applicant at any time, if the parents find they cannot pay the fee. (Tr. p. 19)

16. The applicant also requires a late charge of \$5.00 if a parent is more than 15 days late in paying the after-school program fee. This fee is also waived or reduced in cases of need. (Tr. p. 21)

17. It has always been applicant's practice to waive or reduce fees or late charges and the applicant did this during the period August 23, 1995, through December 31, 1995. (Tr. pp. 22 & 23)

18. During the 1995-1996 fiscal year ending June 30, 1996, the applicant's total income was \$431,014.00, of which \$412,452.00 was derived from public and private charity. (Appl. Ex. No. 4)

19. After the closing on the property, the applicant occupied and began to use all of the building and the garage, except the second floor apartment and one of the three garage spaces, which were leased to a holdover tenant. The applicant immediately served a notice to quit on the tenant who vacated the second floor apartment on September 30, 1995. From August 23, 1995, through September 30, 1995, the applicant collected \$848.87 in rent for the tenant's occupancy of the second floor apartment. (Tr. pp. 26 & 27)

20. Once the tenant moved out of the second floor apartment, the applicant began to paint the second floor and also to refinish the floors. This work was completed within a couple of weeks, and the applicant immediately began to use the second floor for program space. (Tr. pp. 27 & 28)

21. The applicant has used the entire building at 7731 North Marshfield for program space since September 30, 1995. (Tr. p. 32)

22. After the 2nd floor tenant moved out, the applicant has used the entire garage for its purposes. One space is used by an employee of applicant for parking, and the remainder of the garage is used by the applicant for the storage of books and other materials. (Tr. pp. 32 & 33)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;

(b) beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt

arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. Since the applicant accepts any children from the area in need of its programs, and waives or reduces fees in cases of need, I conclude that the benefits derived are for an indefinite number of persons, charity is dispensed to all who need and apply for it, and no obstacles are placed in the way of those seeking the benefits. Since the applicant is organized under the General Not For Profit Corporation Act of Illinois, I conclude that the applicant has no capital, capital stock, or shareholders, and does not profit from the enterprise. I further conclude that the applicant's funds are derived mainly from public and private charity. Finally, I conclude that the applicant used the basement, first, and third floors of the building on this parcel, as well as 2/3rds of the garage, for charitable purposes during the period August 23, 1995, through December 31, 1995.

Concerning the second floor apartment in the building on this parcel and 1/3rd of the garage, which were rented during the period August 23, 1995 through September 30, 1995, Illinois Courts have consistently held that the use of property to produce income is not an exempt

use, even though the net income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* the Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit. So far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934). I therefore conclude that the 2nd floor apartment and 1/3rd of the garage did not qualify for exemption for the period August 23, 1995 through September 30, 1995.

As soon as the tenant vacated the second floor apartment on September 30, 1995, the applicant began to paint the apartment and refinished the floors. Within a few weeks, the applicant was ready to use the 2nd floor for program purposes. Illinois Courts have consistently held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). Consequently, I conclude that the second floor of the building on this parcel qualified for exemption from the date that the applicant came into possession of same, September 30, 1995.

The portion of the garage used by the second floor tenant became available for use by applicant when the second floor tenant vacated the apartment.

35 ILCS 200/15-125 exempts certain property from taxation in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt.

In view of the above provision, I conclude that when the space in the garage became available for parking by the employee of the applicant, it qualified for exemption.

Concerning the portion of the garage used by the applicant for storage, the Illinois Appellate Court has determined that property owned by an exempt organization and used for the storage of records and other items used by that organization for exempt purposes qualified for exemption. Our Savior Lutheran Church v. Department of Revenue, 204 Ill.App.3d 1055 (5th Dist. 1990), leave to appeal denied. I therefore conclude that the area of the garage used for storage qualified for exemption.

I consequently recommend that Cook County Parcel Index No. 11-30-217-004, 3/4ths of the building thereon, and 3/4ths of the land on which the building is located, as well as 2/3rds of the garage and 2/3rds of the land on which the garage is located, qualified for exemption for 36% of the 1995 assessment year.

I further recommend that the remaining 1/4th of the building, 1/4th of the land on which the building is located, as well as 1/3rd of the garage and 1/3rd of the land on which the garage is located, qualified for exemption for 25% of the 1995 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
January 28, 1998